

AMENDED IN SENATE MAY 5, 2008  
AMENDED IN SENATE APRIL 15, 2008  
AMENDED IN SENATE MARCH 24, 2008

**SENATE BILL**

**No. 1255**

---

**Introduced by Senator Harman**

February 15, 2008

---

An act to amend Section ~~17524~~ 3041.5 of the Family Code, relating to child ~~support~~ custody.

LEGISLATIVE COUNSEL'S DIGEST

SB 1255, as amended, Harman. Child ~~support~~ ~~arrearages~~ custody.

*Existing law, until January 1, 2009, authorizes a court to require any person who is seeking custody of, or visitation with, a child who is the subject of a custody, visitation, or guardianship proceeding, to undergo testing for the illegal use of controlled substances and the use of alcohol under certain circumstances.*

*This bill would extend the effective date of these provisions until January 1, 2013.*

~~Existing law provides that upon making an application to the local child support agency for child support enforcement services, every applicant shall be requested to give the local child support agency a statement of arrearages stating whether any support arrearages are owed. If the applicant alleges arrearages are owed, the statement shall be signed under penalty of perjury.~~

~~This bill would revise the latter provision to provide, instead, that if the applicant alleges arrearages are owed, the applicant shall sign the statement of arrearages under penalty of perjury, and the agency shall serve it on the obligor by mail. The agency shall file the statement of~~

support arrearages with the court when commencing an action to recover child support arrearages. By creating new duties for local child support agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.  
State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 3041.5 of the Family Code is amended  
2     to read:  
3     3041.5. (a) In any custody or visitation proceeding brought  
4     under this part, as described in Section 3021, or any guardianship  
5     proceeding brought under the Probate Code, the court may order  
6     any person who is seeking custody of, or visitation with, a child  
7     who is the subject of the proceeding to undergo testing for the  
8     illegal use of controlled substances and the use of alcohol if there  
9     is a judicial determination based upon a preponderance of evidence  
10    that there is the habitual, frequent, or continual illegal use of  
11    controlled substances or the habitual or continual abuse of alcohol  
12    by the parent, legal custodian, person seeking guardianship, or  
13    person seeking visitation in a guardianship. This evidence may  
14    include, but may not be limited to, a conviction within the last five  
15    years for the illegal use or possession of a controlled substance.  
16    The court shall order the least intrusive method of testing for the  
17    illegal use of controlled substances or the habitual or continual  
18    abuse of alcohol by either or both parents, the legal custodian,  
19    person seeking guardianship, or person seeking visitation in a  
20    guardianship. If substance abuse testing is ordered by the court,  
21    the testing shall be performed in conformance with procedures  
22    and standards established by the United States Department of  
23    Health and Human Services for drug testing of federal employees.  
24    The parent, legal custodian, person seeking guardianship, or person  
25    seeking visitation in a guardianship who has undergone drug testing

1 shall have the right to a hearing, if requested, to challenge a positive  
2 test result. A positive test result, even if challenged and upheld,  
3 shall not, by itself, constitute grounds for an adverse custody or  
4 guardianship decision. Determining the best interests of the child  
5 requires weighing all relevant factors. The court shall also consider  
6 any reports provided to the court pursuant to the Probate Code.  
7 The results of this testing shall be confidential, shall be maintained  
8 as a sealed record in the court file, and may not be released to any  
9 person except the court, the parties, their attorneys, the Judicial  
10 Council (until completion of its authorized study of the testing  
11 process) and any person to whom the court expressly grants access  
12 by written order made with prior notice to all parties. Any person  
13 who has access to the test results may not disseminate copies or  
14 disclose information about the test results to any person other than  
15 a person who is authorized to receive the test results pursuant to  
16 this section. Any breach of the confidentiality of the test results  
17 shall be punishable by civil sanctions not to exceed two thousand  
18 five hundred dollars (\$2,500). The results of the testing may not  
19 be used for any purpose, including any criminal, civil, or  
20 administrative proceeding, except to assist the court in determining,  
21 for purposes of the proceeding, the best interest of the child  
22 pursuant to Section 3011, and the content of the order or judgment  
23 determining custody or visitation. The court may order either party,  
24 or both parties, to pay the costs of the drug or alcohol testing  
25 ordered pursuant to this section. As used in this section, “controlled  
26 substances” has the same meaning as defined in the California  
27 Uniform Controlled Substances Act, Division 10 (commencing  
28 with Section 11000) of the Health and Safety Code.

29 (b) This section shall remain in effect only until January 1, 2009  
30 2013, and as of that date is repealed, unless a later enacted statute,  
31 that is enacted before January 1, 2009 2013, deletes or extends  
32 that date.

33 ~~SECTION 1. Section 17524 of the Family Code is amended~~  
34 ~~to read:~~

35 ~~17524. (a) Upon making application to the local child support~~  
36 ~~agency for child support enforcement services pursuant to Section~~  
37 ~~17400, every applicant shall be requested to give the local child~~  
38 ~~support agency a statement of arrearages stating whether any~~  
39 ~~support arrearages are owed. If the applicant alleges arrearages~~  
40 ~~are owed, the applicant shall sign the statement of arrearages under~~

1 penalty of perjury, and the agency shall serve it on the obligor by  
2 mail. The agency shall file the statement of support arrearages  
3 with the court when commencing an action to recover child support  
4 arrearages.

5 (b) For all cases opened by the district attorney or local child  
6 support agency after December 31, 1995, the local child support  
7 agency shall enforce only arrearages declared under penalty of  
8 perjury pursuant to subdivision (a), arrearages accrued after the  
9 case was opened, or arrearages determined by the court in the child  
10 support action. Arrearages may be determined by judgment, noticed  
11 motion, renewal of judgment, or registration of the support order.

12 (c) For all cases opened by the district attorney on or before  
13 December 31, 1995, the local child support agency shall enforce  
14 only arrearages that have been based upon a statement of arrearages  
15 signed under penalty of perjury or where the local child support  
16 agency has some other reasonable basis for believing the amount  
17 of claimed arrearages to be correct.

18 SEC. 2. If the Commission on State Mandates determines that  
19 this act contains costs mandated by the state, reimbursement to  
20 local agencies and school districts for those costs shall be made  
21 pursuant to Part 7 (commencing with Section 17500) of Division  
22 4 of Title 2 of the Government Code.